CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

CASE OF SILVER AND OTHERS v. THE UNITED KINGDOM

(Application no. 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75)

JUDGMENT

STRASBOURG

25 March 1983

In the case of Silver and others,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court*, as a Chamber composed of the following judges:

Mr. G. WIARDA, *President*,
Mr. Thór VILHJÁLMSSON,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. L.-E. PETTITI,
Sir Vincent EVANS,
Mr. C. RUSSO,

and also Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 23 and 24 September 1982 and 24 and 25 February 1983,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case of Silver and others was referred to the Court by the European Commission of Human Rights ("the Commission"). The case originated in seven applications (nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75) against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on various dates between 1972 and 1975 by Mr. Reuben Silver, Mr. Clifford Dixon Noe, Mrs. Judith Colne, Mr. James Henry Tuttle, Mr. Gary Cooper, Mr. Michael McMahon and Mr. Desmond Roy Carne under Article 25 (art. 25) of the Convention. The Commission ordered the joinder of the applications on 11 March 1977.

2. The Commission's request was lodged with the registry of the Court on 18 March 1981, within the period of three months laid down by Articles 32 § 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby the United Kingdom recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Articles 6 § 1, 8 and 13 (art. 6-1, art. 8, art. 13).

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* Note by the registry: In the version of the Rules applicable when proceedings were instituted. A revised version of the Rules of Court entered into force on 1 January 1983, but only in respect of cases referred to the Court after that date.

3. The Chamber of seven judges to be constituted included, as ex officio members, Sir Vincent Evans, the elected judge of British nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 § 3 (b) of the Rules of Court). On 25 April 1981, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mrs. D. Bindschedler-Robert, Mr. F. Matscher, Mr. L.-E. Pettiti, Mr. C. Russo and Mr. R. Bernhardt (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

Subsequently, Mr. F. Gölcüklü and Mr. Thór Vilhjálmsson, substitute judges, took the respective places of Mrs. Bindschedler-Robert, whom the President had exempted from sitting on the case, and Mr. Bernhardt, who was prevented from taking part in the further consideration of the case (Rules 22 § 1 and 24 §§ 1 and 4).

4. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 § 5), ascertained, through the Registrar, the views of the Agent of the Government of the United Kingdom ("the Government") and the Delegates of the Commission regarding the procedure to be followed. He decided on 4 May that the Agent should have until 4 September 1981 to file a memorial and that the Delegates should be entitled to file a memorial in reply within two months from the date of the transmission of the Government's memorial to them by the Registrar. The President agreed on 13 August to extend the first of these time-limits until 2 October 1981.

The Government's memorial was received at the registry on 2 October 1981. On 4 December, the Secretary to the Commission, who had informed the Registrar on 14 October that the Delegates did not themselves wish to reply in writing, transmitted to the Court observations on the memorial, which had been submitted to the Delegates by the applicants' lawyers.

5. The Court held a preparatory meeting on 27 January 1982 when it formulated certain proposals with a view to the limitation of the scope of the hearings to be held before it. On the same occasion, the Court drew up a list of questions and requests which were communicated by the Registrar on 10 February to the Government and the Commission; replies thereto were received from the Government on 14 June and, as regards one question, from the Commission on 6 August.

6. After consulting, through the Registrar, the Agent of the Government and the Delegates of the Commission, the President directed, on 17 May, that the hearings should open on 22 September 1982 and, on 22 July that their scope should be limited in the manner set out in his Order of the last-mentioned date.

7. The hearings were held in public at the Human Rights Building, Strasbourg, on 22 September 1982.

There appeared before the Court:

- for the Government:

Mrs. A. GLOVER, Legal Adviser,

Foreign and Commonwealth Office, *Agent*,
Mr. S. BROWN,
Mr. N. BRATZA, Barristers-at-Law, *Counsel*,
Mrs. S. EVANS,
Mr. C. OSBORNE,
Miss V. DEWS, Home Office,
Mr. R. PHILLIPS, Treasury Solicitor's Office, *Advisers*;

- for the Commission:
Mr. J. FAWCETT,
Mr. F. ERMACORA, *Delegates*,
Mr. A. LESTER, Q.C.,
Mr. M. BELOFF, Q.C.,
Mr. B. RAYMOND,
Mr. S. GROSZ, Solicitors,
assisting the Delegates (Rule 29 § 1, second sentence, of the Rules of Court).

The Court heard addresses by Mr. Brown for the Government and by Mr. Fawcett, Mr. Ermacora and Mr. Lester for the Commission, and also replies to questions put by two of its members.

8. On 22 September, the Commission filed a number of documents, including a memorial which they had received from the applicants regarding the application of Article 50 (art. 50) of the Convention in the event that the Court should find a violation to have occurred.

On the same date, the President directed that the Government should have until 22 November to reply in writing to the said memorial, a time-limit which he subsequently extended at the Government's request to 14 January 1983. The reply was received at the registry on the last-mentioned date.

On 25 January 1983, the President directed that the Delegates of the Commission should have until 14 March 1983 to file any observations which they or the applicants might wish to make on the aforesaid reply.

AS TO THE FACTS

9. The principal complaint of all seven applicants was that the control of their mail by the prison authorities constituted a breach of their right to respect for correspondence and of their freedom of expression, guaranteed by Articles 8 and 10 (art. 8, art. 10) of the Convention, respectively. They also alleged that, contrary to Article 13 (art. 13), no effective domestic remedy existed for the aforesaid breaches. In addition, Mr. Silver claimed that he had been denied access to the courts, in violation of Article 6 § 1

(art. 6-1), on account of the refusal of two petitions for permission to seek legal advice.

I. FACTS PARTICULAR TO THE INDIVIDUAL APPLICANTS

A. Mr. Silver

10. The first applicant, Mr. Reuben Silver, was born in 1915 and was a United Kingdom citizen. When he lodged his application with the Commission (20 November 1972), he was detained in prison in England. He was released from prison in February 1974 and died in March 1979.

11. In the period from January 1972 to March 1973, 7 of Mr. Silver's letters were stopped by the prison authorities for the reasons indicated in paragraphs 59, 62, 63, 66, 68 and 69 below.

This applicant did not complain through the internal prison channels (see paragraphs 51-53 below) of the stopping of his correspondence; he claimed that the prison governor prevented him from raising each incident by way of petition to the Home Secretary because he, Mr. Silver, already had petitions outstanding at the material times.

12. On 20 November 1972, Mr. Silver petitioned the Home Secretary for permission to seek legal advice concerning allegedly negligent treatment in prison and also complained, inter alia, about his medical and dental treatment. Permission was refused on 18 April 1973. On 30 July 1973, he submitted another petition in which he referred to his earlier petition and requested leave to seek legal advice about his dental treatment. The second petition was apparently granted on 1 October 1973, but Mr. Silver claimed that he was never so informed. At the time of both petitions, prisoners could not seek legal advice about prospective civil proceedings without the Home Secretary's leave (see paragraph 32 below).

B. Mr. Noe

13. The second applicant, Mr. Clifford Dixon Noe, is a citizen of the United States of America, born in 1930. When he lodged his application with the Commission (1 February 1973), he was serving a sentence of imprisonment in England after being convicted of fraud. He was released from prison on 31 January 1977 and subsequently deported from the United Kingdom.

14. In the period from May 1972 to April 1975 and for the reasons indicated in paragraphs 6O, 61, 67 and 71 below, 4 of Mr. Noe's letters were stopped by the prison authorities and the posting of a further letter was delayed for three weeks.

This applicant apparently complained through the internal prison channels of this action, other than the stopping of his letter no. 9, but without success.

C. Mrs. Colne

15. The third applicant, Mrs. Judith Colne, is an Australian citizen, born in 1927. She is a schoolteacher and resides in London.

16. Around May 1974, Mrs. Colne began correspondence with a Mr. Michael Williams, the brother of an imprisoned friend of hers. Mr. Williams was then detained in H.M. Prison Albany and was a "category A" prisoner, this being the security category reserved for persons who, if they escaped, would be highly dangerous to the public or the police or to the security of the State. Following his transfer in July 1974 to H.M. Prison Hull, their correspondence was noticed and stopped for the reason indicated in paragraph 59 below. It resumed, unnoticed, following his further transfer to H.M. Prison Wakefield in August 1974 but was discovered during the following month; thereafter, and for the same reason, all correspondence between them was prevented.

This applicant raised the matter, both directly and through a Member of Parliament, with the Home Secretary, but without success.

D. Mr. Tuttle

17. The fourth applicant, Mr. James Henry Tuttle, is a United Kingdom citizen, born in 1914. When he lodged his application with the Commission (20 March 1975), he was detained in prison in England. He was released on licence on 5 January 1981.

18. In March 1975, 2 of Mr. Tuttle's letters were stopped by the prison authorities for the reasons indicated in paragraphs 62, 64 and 68 below.

This applicant apparently complained, in a petition to the Home Secretary, of the stopping of his correspondence, but without success.

E. Mr. Cooper

19. The fifth applicant, Mr. Gary Cooper, is a United Kingdom citizen, born in 1946. When he lodged his application with the Commission (28 October 1974), he was serving a sentence of imprisonment in England. He was released on 14 December 1981, but was later imprisoned again.

20. In the period from April 1974 to March 1976, 14 of Mr. Cooper's letters were stopped by the prison authorities for the reasons or in the circumstances indicated in paragraphs 60, 65, 67 and 71 below.

This applicant apparently complained unsuccessfully through the internal prison channels of the stopping of 6 of the 14 letters, namely nos. 20, 22, 23, 24, 26 and 27.

F. Mr. McMahon

21. The sixth applicant, Mr. Michael McMahon, is a United Kingdom citizen, born in 1944. When he lodged his application with the Commission (8 July 1975), he was serving a sentence of imprisonment in England, as a "category A" prisoner, after being convicted of murder. He was released on 18 July 1980.

22. In the period from March 1975 to February 1976, 11 of Mr. McMahon's outgoing letters were stopped by the prison authorities and one letter to him was withheld.

This applicant submitted three petitions to the Home Secretary, of which one was successful: it was admitted that a letter to the Archbishop of Canterbury (no. 33) should not have been stopped as the addressee was a Member of Parliament; the letter was accordingly sent and Mr. McMahon withdrew his complaint in this respect. The reasons for the stopping or withholding of the remaining 11 letters are indicated in paragraphs 59, 61, 66 and 70 below.

G. Mr. Carne

23. The seventh applicant, Mr. Desmond Roy Carne, is a United Kingdom citizen, born in 1945. When he lodged his application with the Commission (5 April 1975), he was serving a sentence of imprisonment in England after being convicted of theft. He was released on 30 August 1977.

24. In the period from November 1974 to May 1976, 22 of Mr. Carne's letters were stopped by the prison authorities for the reasons indicated in paragraphs 59, 60, 64, 66, 67 and 68 below.

This applicant apparently complained, either through the internal prison channels or by having the matter raised with the Parliamentary Commissioner for Administration, of the stopping of each of these letters, but to no avail.

II. DOMESTIC LAW AND PRACTICE

25. The control over and responsibility for prisons and prisoners in England and Wales is vested by the Prison Act 1952 in the Home Secretary. He is empowered by section 47(1) of that Act to make rules "for the regulation and management of prisons ... and for the classification, treatment, employment, discipline and control of persons required to be detained therein". Such rules are contained in statutory instruments laid

before Parliament and made in accordance with the negative resolution procedure, that is, they come into operation unless Parliament otherwise resolves.

The rules made by the Home Secretary currently in force, a number of which relate to prisoners' correspondence, are the Prison Rules 1964, as amended ("the Rules").

26. With a view to securing uniformity of practice throughout prison establishments, the Home Secretary also issues to prison governors management guides or directives in the form of Standing Orders ("Orders") and Circular Instructions ("Instructions"). Unless otherwise authorised, governors are required to comply with these directives, but they do not have, or purport to have, the force of law.

At the time of the events giving rise to this case and until 30 November 1981, both Orders and Instructions contained, in addition to directives on the control of prisoners' correspondence, internal rules and guidance of a general nature concerning the day to day administration of the prison. The Orders and Instructions were made available to Members of both Houses of Parliament for reference but not to the public or prisoners, although the latter received, by means of cell cards, information about certain aspects of the control of correspondence.

With effect from 1 December 1981, the directives on prisoners' correspondence were substantially revised. In addition, revised Orders relating to correspondence have been published in their entirety, matters of a management or administrative nature which do not concern a prisoner's entitlement to correspond and were considered inappropriate for publication having been eliminated from the Orders and embodied in Instructions. The Rules themselves have not been amended, although the Government indicated at the hearing before the Court that as soon as practicable Rule 34(8) (see paragraph 29 below) would be repealed in so far as it affected correspondence.

27. As far as prisoners' correspondence is concerned, the Home Secretary's directives to governors were and are intended to serve a dual function: on the one hand, to circumscribe the discretion conferred on governors by the Rules, and, on the other, to state the manner in which the Home Secretary has decided in certain respects to exercise his own discretionary powers thereunder. The principal provisions which the Rules contain on the subject are set out below, accompanied by a summary of:

(a) the relevant Orders and Instructions in force until 30 November 1981; and

(b) the changes that took effect after that date.

A. General provisions

28. The following Rules, containing general provisions on the control of correspondence, came into operation on 25 March 1964 and are still in force:

> "33(1) The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose restrictions, either generally or in a particular case, upon the communications to be permitted between a prisoner and other persons.
>
> ...
>
> (3) Except as provided by these Rules, every letter or communication to or from a prisoner shall" (or, with effect from 1 June 1974, "may") "be read or examined by the governor or an officer deputed by him, and the governor may, at his discretion, stop any letter or communication on the ground that its contents are objectionable or that it is of inordinate length."

B. Provisions concerning the identity of correspondents

29. The following basic Rules, both concerning the identity of persons with whom a prisoner may correspond, came into effect on 25 March 1964 and are still in force:

> "33(2) Except as provided by statute or these Rules, a prisoner shall not be permitted to communicate with any outside person, or that person with him, without the leave of the Secretary of State.
>
> 34(8) A prisoner shall not be entitled under Rule 34" - which regulates the quantity of correspondence - "to communicate with any person in connection with any legal or other business, or with any person other than a relative or friend, except with the leave of the Secretary of State."

1. Position prior to 1 December 1981

30. Under Rule 34(8), as supplemented by Orders 5A 22, 5A 23 and 5A 30, prisoners had to seek the Home Secretary's leave to correspond with any person other than a close relation; they were, however, also normally allowed, without the necessity to seek such leave, to correspond with other relatives or existing friends, but the governor had discretion to forbid such correspondence on grounds of security or good order and discipline or in the interests of the prevention or discouragement of crime. Governors had a discretion - which they would have been unlikely to exercise in favour of a "category A" prisoner, such as Mr. Williams or Mr. McMahon - to allow communications with other persons not personally known to the prisoner before he came into custody, but generally he could not write to other

prisoners, ex-prisoners, marriage bureaux, "Monomark addresses" or specified categories of pen friends.

In addition, standing leave had been granted for correspondence falling into certain special categories, as explained in paragraphs 31-36 below.

(a) Correspondence with legal advisers

31. With effect from 1 January 1973, uncensored correspondence relating to civil or criminal proceedings to which the prisoner was already a party was permitted under Rule 37A(1), which is still in force and reads:

> "A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Governor has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under Rule 33(3) of these Rules."

32. Until 6 August 1975, inmates had to petition the Home Secretary for permission to seek advice about, or give instructions for, the institution of civil proceedings (with the exception of certain divorce cases). On that date, Instruction 45/1975 introduced changes which were subsequently reflected in Rule 37A(4) and directions made by the Secretary of State thereunder, in the shape of Order 17A. Rule 37A(4), which came into operation on 26 April 1976 and is still in force, reads:

> "Subject to any directions of the Secretary of State, a prisoner may correspond with a solicitor for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the solicitor to issue such proceedings."

Order 17A provided, inter alia, that:

(i) the inmate had to have sought a solicitor's advice before he would be permitted to institute proceedings;

(ii) at each stage a written application, with reasons, had first to be made to the prison governor for the necessary facilities; they had to grant immediately, except that, in the case of prospective civil proceedings against the Home Office "arising out of or in connexion with" the imprisonment, the "prior ventilation rule" (see paragraph 47 below) generally applied.

Correspondence in this category was otherwise subject to the restrictions on contents mentioned at paragraphs 41-47 below.

(b) Correspondence with Members of Parliament

33. Prisoners were free to communicate with their Members of Parliament, subject to the restrictions on contents mentioned at paragraphs 41-47 below.

(c) Correspondence with Consular and Commonwealth officials

34. Prisoners who were foreign nationals or citizens of the Irish Republic or a Commonwealth country were free to communicate with the accredited representatives of their countries in the United Kingdom, subject to the restrictions on contents mentioned at paragraphs 41-47 below.

(d) Correspondence with certain organisations

35. Under Order 5A 31(2) b., a prisoner could, without first seeking leave from the Home Secretary or the prison governor, write to the National Council for Civil Liberties, "Justice", "Release" or the Howard League for Penal Reform to seek legal advice about his conviction and sentence, or about general matters. He could, in addition, write to these organisations to ask for legal proceedings to be instituted and, although originally he could not seek legal advice from them about any matter relating to his prison treatment, this was subsequently allowed by Instruction 38/1977, subject however to the "prior ventilation rule" (see paragraph 47 below). In the two latter cases, however, the prisoner had first to follow the procedures introduced by Instruction 45/1975 and then enshrined in Order 17A (application to the governor for facilities; see paragraph 32 above).

Correspondence in this category was otherwise subject to the restrictions on contents mentioned at paragraphs 41-47 below.

(e) Applications to the European Commission of Human Rights

36. Special provisions applied to applications to the Commission; in particular, the Home Secretary's leave was required neither for their submission nor for correspondence with legal advisers relative thereto, and the "prior ventilation rule" did not apply.

2. Position with effect from 1 December 1981

37. Most of the restrictions which the earlier Orders and Instructions contained on the identity of correspondents have now been abolished. Although the relevant Rules have not themselves been amended, the revised Orders (nos. 5B23-5B30) state that, provided the provisions concerning the contents of correspondence (see paragraph 48 below) are observed, a prisoner may communicate with any person or organisation, subject to certain exceptions of which the principal are:

(a) recipients of correspondence (other than spouses) who have requested that no further letters be sent;

(b) other prisoners, who are not relatives, where there is reason to believe that correspondence would seriously impede rehabilitation or where the prevention of communication is desirable in the interests of security or good order or discipline;

(c) ex-prisoners, where there is reason to believe that correspondence would seriously impede rehabilitation;

(d) a person (other than a close relative) or organisation believed to be planning or engaged in activities that seriously threaten the security or good order of a prison establishment.

C. Provisions concerning the quantity of correspondence

38. The following basic Rules concerning the amount of correspondence which a prisoner may conduct came into operation on 25 March 1964 and are still in force:

> "34(1) An unconvicted prisoner may send and receive as many letters ... as he wishes within such limits and subject to such conditions as the Secretary of State may direct, either generally or in a particular case.
>
> (2) A convicted prisoner shall be entitled
>
> (a) to send and to receive a letter on his reception into a prison and thereafter once a week;
>
> ...
>
> (3) The governor may allow a prisoner an additional letter ... where necessary for his welfare or that of his family.
>
> (4) The governor may allow a prisoner entitled to a visit to send and to receive a letter instead.
>
> ...
>
> (6) The visiting committee or board of visitors" (or, with effect from 1 January 1972, "The board of visitors") "may allow a prisoner an additional letter ... in special circumstances ...
>
> (7) The Secretary of State may allow additional letters ... in relation to any prisoner or class of prisoners."

1. Position prior to 1 December 1981

39. In addition to his entitlement under Rule 34(2) to send - at public expense - and to receive one letter per week, a convicted prisoner was allowed to send at his own expense at least one extra letter per week, and to receive a reply (Order 5A 3(8) and Instruction 155/1968).

The prison authorities' discretion under Rules 34(3), (6) and (7) to allow further letters was exercised where possible.

These quantitative restrictions did not apply to remand prisoners (Rule 34(1)), but they were in most other respects subject to the same regulations on correspondence as convicted prisoners.

2. Position with effect from 1 December 1981

40. The revised Orders (nos. 5B7 and 5B14) do not alter the basic entitlement but specify that additional extra letters should be allowed as far as practicable.

D. Provisions concerning the contents of correspondence

41. In addition to Rule 33(3), the text whereof appears at paragraph 28 above, the following basic Rule concerning the contents of prisoners' correspondence came into operation on 25 March 1964 and is still in force:

> "34(8) A prisoner shall not be entitled under Rule 34" - which regulates the quantity of correspondence - "to communicate with any person in connection with any legal or other business ... except with the leave of the Secretary of State."

1. Position prior to 1 December 1981

42. Rules 33(3) and 34(8) were supplemented as follows by various Orders and Instructions.

43. Under Order 5A 31, a convicted prisoner was specifically prohibited from making representations on matters connected with his trial, conviction or sentence to any judge, public authority, representative of any Commonwealth or foreign government (subject to certain exceptions for prisoners who were foreign nationals or citizens of another Commonwealth country) or unofficial organisation (subject again to certain specific exceptions). Such representations could, however, be made to the Home Secretary.

44. Under Order 5A 24, prisoners were not allowed to send letters requesting anyone to make on their behalf a communication which they would not be permitted to make directly, or certain other letters which would circumvent the regulations.

45. (a) Orders 5A 26(4) a. and b. and 5A 29 prohibited the inclusion in outgoing letters (other than those to Members of Parliament or Consular or Commonwealth officials, to which special rules applied) of any of the following matters:

(i) objectionable references to persons in public life;

(ii) discussion of crime and criminal methods or of the offences of others;

(iii) any complaint about the courts, the police and the prison authorities that was a deliberate and calculated attempt to hold them up to contempt;

(iv) threats of or incitement to violence;

(v) material intended for publication or for use on wireless or television (this rule was relaxed as regards certain specialised publications);

(vi) grossly improper language;

(vii) statements about private individuals which were patently scandalous or libellous or otherwise deliberately calculated to do them harm;

(viii) begging requests for money or valuable property;

(ix) complaints about prison treatment;

(x) allegations against prison officers;

(xi) attempts to stimulate public agitation or petition.

Similar regulations applied to incoming letters (Order 5A 26(4) d.).

As recorded in paragraphs 32 and 35 above, the prohibition on the inclusion of complaints about prison treatment or allegations against prison officers did not apply to certain correspondence with legal advisers (after 6 August 1975) and with specified organisations (after 26 August 1977), provided always that the "prior ventilation rule" (see paragraph 47 below) had been satisfied.

(b) Until 28 November 1975, a broadly similar list of prohibited contents applied to letters to Members of Parliament, except that they could contain complaints about prison treatment or against prison staff in respect of which the "prior ventilation rule" had been observed. Thereafter, a letter to a Member of Parliament would have been stopped only if it included an unventilated complaint of that kind (Order 5C, as amended by Instruction 62/1975). At the time of the change of practice, a notice summarising the regulations concerning letters to Members of Parliament was issued for the information of prisoners. It contained the following passage:

> "A complaint or request about prison treatment should be made to the Governor, Board of Visitors or visiting officer, or by petition to the Home Secretary .... A complaint against a member of staff should be made to the Governor. A complaint on these matters may not be made to a Member of Parliament before official action is complete."

(c) Letters from convicted prisoners who were foreign nationals or citizens of the Irish Republic or a Commonwealth country to Consular or Commonwealth officials were subject to the same rules as to contents as letters to Members of Parliament until 3 September 1975. On that date this restriction was abolished (Order 5A 20, as amended by the Instruction of 3 September 1975).

46. With the exception of certain correspondence in connection with legal business for which standing leave had been granted as explained in paragraphs 31, 32 and 35 above, Rule 34(8) prohibited any communications on any legal or other business without the prior leave of the Home Secretary. The conduct of business by prisoners was further dealt with by Orders 1C 4-6, the basic provision being that "an inmate" - whether convicted or not - "may not conduct any business activity in prison, but should be allowed reasonable facilities for arranging its conduct on his behalf". However, subject to this general rule, governors had discretion to allow an inmate to deal with certain limited personal business matters, in

particular to dispose of private property, to sign a cheque or to make or sign a will or other document. The broad effect of the regulations was that, although a prisoner could not participate personally on a continuing basis in a business concern, he was allowed to make arrangements to protect the value, for his own and his family's benefit, of his personal property and any business interests.

47. A complaint about prison treatment or an allegation against a prison officer could be contained or referred to only in correspondence with legal advisers, specified organisations, Members of Parliament or Consular or Commonwealth officials, as indicated in paragraph 45 above. Moreover, under the "prior ventilation rule" - set out, in particular, in Order 17A - a letter in any of these categories which alluded to such a matter would, with certain exceptions, be stopped unless and until the prisoner had ventilated his complaint through the normal internal channels (petition to the Home Secretary, or application to the Board of Visitors, a visiting officer of the Home Secretary or the prison governor) and been given a definitive reply. Thereafter, and in general irrespective of the outcome, the correspondence could proceed.

2. Position with effect from 1 December 1981

48. Rules 33(3) and 34(8) are now supplemented by the new Orders 5B34 and 5B40. The current position is as follows.

(a) The prohibition on representations about trial, conviction or sentence (see paragraph 43 above) is abolished.

(b) Provisions similar to the earlier Order 5A 24 (designed to prevent the evasion or circumvention of the regulations - see paragraph 44 above) remain in force.

(c) The list of prohibited contents (see paragraph 45 (a) above) has been revised; the main items which may now not be included in incoming or outgoing letters may be summarised as follows:

(i) material which would jeopardise prison security;

(ii) material which would assist or encourage the commission of a disciplinary or criminal offence;

(iii) material which could jeopardise national security;

(iv) descriptions of the making of certain destructive devices;

(v) certain obscure or coded messages;

(vi) threats of violence or damage to property likely to induce fear in the recipient;

(vii) blackmail or extortion;

(viii) certain indecent or obscene material;

(ix) information which would create a clear threat or present danger of violence or physical harm to any person;

(x) complaints about prison treatment, in respect of which the "simultaneous ventilation rule" (see paragraph 49 below) has not been observed;

(xi) material initiating a private prosecution;

(xii) certain specified material intended for publication or for use by radio or television;

(xiii) in the case of a convicted prisoner, material constituting the conduct of a business activity, which expression is defined so as to exclude certain specified personal transactions.

The foregoing list does not apply to correspondence with Consular and Commonwealth officials or, with the exception of item (x), to correspondence with Members of the United Kingdom Parliament (new Orders 5D5 and 5E6).

As regards item (xiii) above, it remains the basic rule that inmates may not conduct any business activity from prison, but this no longer applies to unconvicted prisoners who may correspond without restriction about such matters (revised Orders 1C 4 and 1C 5).

49. The "prior ventilation rule" (see paragraph 47 above) has now been replaced by the "simultaneous ventilation rule", set out in Order 5B34 j. A complaint about prison treatment may be referred to in correspondence as soon as it has been raised through the prescribed procedures and without the prisoner's having to await the outcome of the internal enquiry. The rule does not apply to complaints not requiring investigation or to general complaints in respect of which no corrective or remedial action is possible (for example, regarding overcrowding): these may be mentioned in correspondence without any internal ventilation. Moreover, the effect of the new Orders is that, in contrast to the earlier position, a duly ventilated complaint may now be referred to in any letter, irrespective of the identity of the correspondent.

E. Censorship practice (before and after 1 December 1981)

50. Except as otherwise provided by the Rules (for example, Rule 37A(1); see paragraph 31 above) and until 1 June 1974, all communications to or from a prisoner had, according to Rule 33(3), to be read and examined, although Order 5A 26 gave prison governors a discretion to subject specified domestic correspondence to no more than a cursory examination. With effect from that date, Rule 33(3) was amended to make reading and examination optional, but governors remained and remain subject to the Home Secretary's directives in this respect. Thus, at the present time, outgoing domestic correspondence is normally not to be read or examined at open establishments; elsewhere, all correspondence is to be examined but not necessarily read (new Order 5B32).

A prisoner whose letter is stopped on account of its contents will be given the opportunity of rewriting it. Where the cause of the stoppage is the addressee's identity, the prisoner may use his entitlement to that letter to write to another person.

F. Complaints concerning censorship (before and after 1 December 1981)

1. Internal channels of complaint

51. An inmate who is aggrieved by a decision to stop or censor his correspondence may complain to the prison governor, the Board of Visitors or a visiting officer of the Home Secretary or he may petition the Home Secretary himself. A prisoner may ventilate his complaint through any or all of these channels and, if more than one is utilised, in such sequence as he wishes.

(a) The Board of Visitors

52. As far as the Board of Visitors is concerned, it may examine the compatibility of the decision complained of with the Rules and the Home Secretary's directives. It will draw the governor's attention to any irregularity, or report to the Home Secretary; although its powers are advisory in character, its advice will be implemented save in exceptional circumstances.

(b) Petitions to the Home Secretary

53. Inmates have the right to submit petitions to the Home Secretary about any matter, for example to seek a permission which the local prison management is not empowered to grant or has refused, or to complain of prison treatment.

On a petition being made by a prisoner, complaining of a decision of the prison authorities to stop or censor his correspondence, the Home Secretary would, if he concluded that the relevant Orders had not been properly interpreted or applied by the prison authorities, issue directions to them to secure compliance. Although it is possible for him to depart from the Orders in particular cases, this is likely to occur only rarely, if at all, since their very purpose is to ensure uniformity of practice and to avoid arbitrary interference with correspondence.

Prior to 1 December 1981, directives concerning the submission of petitions were contained in Orders 5B 1-16. It was, in particular, provided that, with certain exceptions, a prisoner could not petition if and so long as he was awaiting a reply to an earlier petition (Order 5B 12(2)).

With effect from 1 December 1981, the provisions of Order 5B 12(2) have been relaxed by new Orders 5C9 and 5C10. A further petition may now be submitted if a month has elapsed since the submission of the previous petition. Moreover, even though an earlier petition be outstanding, a prisoner may petition forthwith on certain specified matters, including interference with his correspondence.

2. The Parliamentary Commissioner for Administration

54. Complaints concerning the control of correspondence may also be raised with the Parliamentary Commissioner for Administration (the Ombudsman). Under section 5 of the Parliamentary Commissioner Act 1967, this officer, who is appointed by the Crown, may, if so requested by a member of the House of Commons, investigate any action taken in the exercise of administrative functions by specified authorities (including the Home Office) where a complaint has been made by a member of the public who claims to have sustained injustice in consequence of "maladministration". Such an investigation may generally not be conducted where court proceedings are available. Section 12 of the Act expressly provides that the Ombudsman may not question the merits of a discretionary decision taken without maladministration; accordingly, his jurisdiction does not extend to interferences with a prisoner's correspondence effected pursuant to a correct exercise of a discretion conferred by the Rules or the Home Secretary's directives. Moreover, he cannot grant direct relief for maladministration since he is limited to reporting the results of his investigation to the Member of Parliament who requested it, the authority concerned and, in certain circumstances, each House of Parliament (section 10).

Until 23 August 1979, prisoners could communicate with the Ombudsman only through a Member of Parliament who was willing to assist. Although this remains the normal method of approach, they may now write directly; however, their letters to the Ombudsman are subject to the same restriction with regard to the simultaneous ventilation of complaints about prison treatment as correspondence with Members of Parliament (see paragraphs 48 and 49 above) and he still cannot proceed with an investigation unless the prisoner's constituency Member so requests.

3. Application to the domestic courts

55. The exercise by the prison authorities of their powers under the Rules to control correspondence is subject to the supervisory control of the English courts by way of proceedings for judicial review. In the exercise of this jurisdiction the courts will intervene to secure compliance by the prison authorities with the Rules in so far as they confer on prisoners an entitlement to send or receive correspondence (for example, Rule 37(A)1;

see paragraph 31 above), and to ensure that the discretion to restrict correspondence, conferred on the authorities by the Rules, is not exercised arbitrarily, in bad faith, for an improper motive or in an ultra vires manner.

The Court notes in this context that in Raymond v. Honey 1982 1 All England Law Reports 759, Lord Wilberforce pointed out that it was a principle of English law that "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication".

4. Malicious or groundless complaints

56. Sanctions may be imposed on prisoners who commit disciplinary offences. Under Rule 47, the latter include making "any false and malicious allegation against an officer" and repeatedly making "groundless complaints", be it in a petition, correspondence or otherwise. An inmate who makes an allegation against a member of the prison staff is to be warned accordingly (Instruction 88/1961, now replaced by unpublished Instruction 14/1980).

III. THE APPLICATION IN THE PRESENT CASE OF DOMESTIC LAW AND PRACTICE ON THE CONTROL OF CORRESPONDENCE

57. The present case arises from the stopping of 62 letters written by the applicants, that is to say 7 by Mr. Silver, 4 by Mr. Noe, 3 by Mrs. Colne, 2 by Mr. Tuttle, 14 by Mr. Cooper, 10 by Mr. McMahon and 22 by Mr. Carne; in the case of Mrs. Colne, the 3 letters are examples of the correspondence which she was prevented from continuing with Mr. Williams. In addition, Mr. Noe complained of delay in posting one of his outgoing letters and Mr. McMahon of the withholding of one of his incoming letters.

The Government informed the Court that the total number of letters sent and received by prisoners in England and Wales in a year was of the order of ten million. An indication of the total volume of the correspondence of the applicants in this case who were in prison is given by the fact that, in the under-mentioned periods (being periods for which records are most readily available), the number of letters written by them and posted by the prison authorities in the form in which they were written was: Mr. Silver - 419 (20 March 1968 to 2 August 1973); Mr. Noe - 149 (14 November 1972 to 15 April 1975, during which time he was at liberty for almost two years); Mr. Tuttle - 94 (2 January to 29 December 1975); Mr. Cooper - 299 (8 August 1974 to 24 June 1976); Mr. McMahon - 492 (5 December 1974 to 9 February 1977); Mr. Carne - 480 (14 October 1974 to 16 June 1976).

58. The provisions under which, pursuant to the law and practice applicable before 1 December 1981, the 64 letters in question were stopped

or delayed are indicated below. In those cases where a letter was stopped for more than one reason, the subsidiary ground or grounds are also stated.

The texts of 59 of these letters are set out in Appendix III to the Commission's report, copies of the remaining 5 not being available. The available letters are those hereinafter referred to by number, the others those referred to solely by date.

A. Provisions concerning the identity of correspondents

Restriction on correspondence other than with a relative or friend (see paragraphs 29-30 above)

59. The following letters were stopped on the ground that they were not sent by or addressed to a relative or existing friend:

(a) Mrs. Colne's letters nos. 13, 14 and 15 to Mr. Williams (see also paragraph 16 above);

(b) Mr. McMahon's letters nos. 35, 36, 37, 38, 39, 40 and 41 (addressed respectively to a broadcasting association, a barrister, the presenter of a television programme, a journalist, the police officer who had been in charge of the investigation of Mr. McMahon's case, a professor of law and the Mayor of Islington) and a letter of 31 December 1975 from the same journalist to Mr. McMahon. The applicant had previously exchanged three letters with the barrister in question, who was not known to him, but their correspondence was prohibited when it appeared that it would go further than a general enquiry. Although letter no. 41 was stopped, Mr. McMahon was apparently allowed to write to a local borough councillor.

This restriction was also a subsidiary ground for stopping Mr. Silver's letter no. 4 and Mr. Carne's letter no. 48 (see paragraph 68 below).

B. Provisions concerning the contents of correspondence

1. Restriction on communications in connection with any legal or other business (see paragraphs 32, 35, 41 and 46 above)

60. (a) Mr. Carne's letter no. 57 to a solicitor and his letter of 15 September 1975 to the National Council for Civil Liberties were stopped as he had not previously applied to the prison governor for facilities to seek legal advice. Both of these letters were written after the entry into force of Instruction 45/1975 (see paragraph 32 above).

(b) Mr. Cooper's letter no. 27 to a solicitor concerning a pending prosecution, which letter also post-dated Instruction 45/1975, was stopped as it was considered that he had already had sufficient facilities to seek legal advice.

(c) The following letters were stopped on the ground of failure to seek the Home Secretary's prior leave:

(i) Mr. Noe's letter no. 10 to a solicitor, which included the following passage: "... the property is going to be lost if you don't come quickly - It is worth 100 to £125,000 - the equity - after refinancing and allowing good solicitor's fees - will be £50 to £75,000 - of which you will have a piece also";

(ii) Mr. Carne's letter no. 49 to the Devon Crown Court, which contained a request that medical reports produced at his trial be sent to his Member of Parliament.

2. Prohibition on representations connected with the prisoner's trial, conviction or sentence (see paragraph 43 above)

61. This prohibition led to the stopping of Mr. Noe's letter no. 8, which was addressed to the Lord Chancellor but actually concerned legal representation at the applicant's appeal. Permission to send the letter was later granted by the Home Office, apparently after the appeal had been heard.

It was also a subsidiary ground for the stopping of Mr. McMahon's letters nos. 35 and 37 (see paragraph 59 above).

3. Prohibition on letters evading or circumventing the regulations (see paragraph 44 above)

62. Mr. Silver's letter no. 1 and Mr. Tuttle's letter no. 18 (see paragraph 68 below), which pre-dated Instruction 45/1975 and Instruction 38/1977 respectively (see paragraphs 32 and 35 above), were also stopped on the subsidiary ground that they therein asked their wives to do what they were not allowed to do themselves: in the first case, to contact a solicitor concerning an injunction against the Home Office in respect of prison treatment and, in the second, to seek legal advice from the National Council for Civil Liberties concerning control of correspondence.

4. Prohibition on discussion of the offences of others (see paragraph 45 (a), item (ii), above)

63. Mr. Silver's letter no. 7, to his wife, was stopped as it contained the following passage: "... one of my close neighbours in the prison is one of the train robbers ... Another one who arrived here last Wednesday is one of the two Asian brothers who reputedly killed .... McKay ..."

5. Prohibition on complaints calculated to hold the authorities up to contempt (see paragraph 45 (a), item (iii), above)

64. Mr. Tuttle's letter no. 17, addressed to his wife, was stopped on the ground that it contained material deliberately calculated to hold the prison authorities up to contempt.

This was also a subsidiary ground for stopping Mr. Carne's letter no. 51 (see paragraph 68 below).

6. Prohibition on threats of violence and grossly improper language (see paragraph 45 (a), items (iv) and (vi), above)

65. Mr. Cooper's letters nos. 28, 29, 30 and 31, all addressed to his parents were stopped on two grounds: that they contained threats of violence and that they employed grossly improper language.

7. Prohibition on material intended for publication (see paragraph 45 (a), item (v), above)

66. The following letters were stopped on the ground that they contained material intended for publication:

(a) Mr. Silver's letter no. 5, addressed to the Advisory Rabbi, The Jewish Chronicle, and seeking dietary advice. The letter was stopped although it was marked "Not for publication" and contained an express request that, because of the rules of the prison, no part of it be published;

(b) Mr. McMahon's letters nos. 32, 34 and 42, the first two being addressed to the producer of a television programme and the third to a newspaper.

This was also a subsidiary ground for stopping Mr. McMahon's letter no. 37 (see paragraph 59 above) and Mr. Carne's letters nos. 60 and 61 (see paragraph 68 below).

8. Prohibition on the inclusion in letters to legal advisers and Members of Parliament of unventilated complaints about prison treatment (see paragraphs 45 (a) and (b) and 47 above)

67. The following letters, all addressed to Members of Parliament, were stopped on the ground that they contained complaints about prison treatment, in respect of which the "prior ventilation rule" had not been observed:

(a) Mr. Noe's letters nos. 9 and 11;

(b) Mr. Cooper's letters nos. 20, 22, 23, 24 and 26, and a further letter of 3 April 1974;

(c) Mr. Carne's letters nos. 43, 45, 53, 54, 58 and 59, and further letters of 27 December 1974 and 11 January 1975.

The stopping of letter no. 43, written whilst Mr. Carne was detained on remand, was the subject of an unsuccessful petition to the Home Secretary; the Government subsequently conceded before the Commission that the

censorship was erroneous, as the letter could not be said to contain a complaint.

The same prohibition also led to the stopping of Mr. Carne's letter no. 56, to a solicitor.

Mr. Noe's letters nos. 9 and 11 were stopped under this rule for the additional reason that the addressee was a barrister as well as a Member of Parliament.

9. Prohibition on the inclusion in general correspondence of complaints about prison treatment (see paragraph 45 (a), item (ix), above)

68. The following letters were stopped because they included complaints about prison treatment:

(a) Mr. Silver's letters nos. 1, 2, 3, 4 and 6, no. 4 being addressed to the Chief Rabbi and the remainder to the applicant's wife. It appears that, one week after the stopping of letter no. 4, which concerned dietary grievances, Mr. Silver was allowed to send a similar letter to the Rabbi;

(b) Mr. Tuttle's letter no. 18, to his wife;

(c) Mr. Carne's letters nos. 44, 46, 47, 48, 50, 51, 52, 55, 60 and 61, addressed respectively to a Mr. McAndrew (nos. 44 and 50), the National Council for Civil Liberties (nos. 46 and 55), the Howard League for Penal Reform (no. 47), a medical practitioner (no. 48), the Health Service Commissioner (no. 51), the Secretary of the National Association for Mental Health (no. 52) and journalists (nos. 60 and 61). Letters nos. 46, 55 and 47 all pre-dated Instruction 38/1977 (see paragraph 35 above).

10. Prohibition on allegations against prison officers (see paragraph 45 (a), item (x), above)

69. This prohibition was a subsidiary ground for stopping Mr. Silver's letter no. 6 (see paragraph 68 above).

11. Prohibition on attempts to stimulate public agitation or petition (see paragraph 45 (a), item (xi), above)

70. A subsidiary ground for stopping Mr. McMahon's letters nos. 32 and 34 (see paragraph 66 above) was that they attempted to stimulate public petition.

12. Miscellaneous

71. The posting of Mr. Noe's letter no. 12, addressed to the United States Consul and containing complaints about the control of correspondence, was delayed for three weeks as it was referred to the Home Office for instructions. The letter was written before the abolition of

restrictions on the contents of letters to Consular officials (see paragraph 45 (c) above).

Mr. Cooper's letters nos. 19, 21 and 25, all addressed to relatives, were stopped on grounds of the general control of "objectionable" letters under Rule 33(3) but without an official explanation being given. The Commission observed that the authority for this action was not clear, beyond the general discretion under the said Rule.

PROCEEDINGS BEFORE THE COMMISSION

72. Mr. Silver, Mr. Noe, Mrs. Colne, Mr. Tuttle, Mr. Cooper, Mr. McMahon and Mr. Carne applied to the Commission on 20 November 1972, 1 February 1973, 2 June 1975, 20 March 1975, 28 October 1974, 8 July 1975 and 5 April 1975, respectively. They alleged that the control of their correspondence by the prison authorities had given rise to violations of Articles 8 and 10 (art. 8, art. 10) of the Convention. Mr. Silver also asserted that the refusal of two petitions to the Home Secretary seeking permission to obtain legal advice constituted a denial of his right of access to the courts, guaranteed by Article 6 § 1 (art. 6-1).

On 5 March 1976, 19 December 1975 and 4 October 1977, respectively, the Commission declared inadmissible the applications of Mr. Silver, Mr. Noe and Mr. Cooper in so far as they contained certain additional complaints. On the last-mentioned date, it declared admissible the remainder of those applications and the whole of the other four; previously, on 11 March 1977, it had ordered the joinder of the seven applications in pursuance of Rule 29 of its Rules of Procedure. Subsequently, each applicant also contended that there had been breach of Article 13 (art. 13) on account of the absence of an effective remedy before a national authority in respect of the alleged violations of his or her Convention rights.

73. On 3 April 1979, Mr. Silver's legal representative notified the Commission of his client's death. In view of the wishes, expressed by Mr. Silver's next of kin, to continue the case and of the issues of general interest raised, the Commission decided on 8 May 1979 to retain the application.
Although the next of kin are today to be regarded as having the status of "applicants" (see the Deweer judgment of 27 February 1980, Series A no. 35, pp. 19-20, § 37), for the sake of convenience the present judgment will continue to refer to Mr. Silver as an "applicant".

74. In its report of 11 October 1980 (Article 31 of the Convention) (art. 31), the Commission expressed the opinion:

- by a series of votes (with one exception unanimous), that, save in respect of six letters (namely, Mr. Silver's letter no. 7, Mr. Cooper's letters nos. 28-31 and Mr. Noe's letter no. 12), the censorship of the applicants'

mail by the prison authorities constituted a violation of their right to respect for correspondence, ensured by Article 8 (art. 8) of the Convention;

- that it was not necessary to pursue a further examination of the matter in the light of Article 10 (art. 10);

- unanimously, that there had been a violation of Mr. Silver's right of access to the civil courts, ensured by Article 6 § 1 (art. 6-1);

- by fourteen votes to one, that the absence of effective domestic remedies for the applicants' claims under Article 8 (art. 8) constituted a violation of Article 13 (art. 13).

FINAL SUBMISSIONS MADE TO THE COURT BY THE GOVERNMENT

75. At the hearings on 22 September 1982, the Government maintained in substance the submissions set out in their memorial of 2 October 1981, whereby they had requested the Court:

"(1) With regard to Article 8 (art. 8)

(i) in so far as the Commission concluded that the facts found disclosed no breach by the United Kingdom of its obligations under Article 8 (art. 8) of the Convention, to confirm and uphold the Commission's conclusions;

(ii) in so far as the Commission's conclusions in respect of the issues under Article 8 (art. 8) of the Convention are contested by the United Kingdom Government, to make findings in accordance with the submissions set out in the Government's memorial;

(iii) in so far as the Commission's findings of breaches of the Convention are not contested by the United Kingdom Government on the grounds of the changes made by the revised Standing Orders to the practice in the United Kingdom relating to prisoners' correspondence:

(a) to decide and declare that the facts found disclose no breaches otherwise than as set forth in the report of the Commission;

(b) to take express note in its judgment of the changes made by the revised Standing Orders as remedying the breaches so found by the Commission;

(2) With regard to Article 6 (art. 6)

(i) to take express note in its judgment of the changes made to the law and practice in the United Kingdom relating to the control of correspondence between prisoners and their legal advisers since the judgment of the Court in the Golder case;

(a) in light of such changes to decline to examine further the claims of breaches of Article 6 (art. 6) of the Convention;

alternatively

(b) to decide and declare that the facts found disclose no breaches by the United Kingdom of its obligations under Article 6 (art. 6) of the Convention otherwise than as set forth in the report of the Commission;

(3) With regard to Article 13 (art. 13)

to decide and declare that the facts found do not disclose a breach by the United Kingdom of its obligations under Article 13 (art. 13) of the Convention, alternatively that such facts would not disclose any such breach after the coming into effect of the revised Standing Orders relating to prisoners' correspondence."

AS TO THE LAW

I. THE SCOPE OF THE PRESENT CASE

76. The applicants complained principally of the stopping or delaying of particular letters, but they also alleged that in this area practices in breach of the Convention continued to exist.

77. The Court does not have to examine this additional allegation. This is because the Commission's decision declaring an application admissible determines the object of the case brought before the Court (see, inter alia, the Ireland v. the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 63, § 157). And, in the present case, the Commission, in its decisions on the admissibility of the applications, stated that the questions which necessitated an examination on the merits were whether the interference constituted by the censorship of correspondence in a number of instances was justified under Article 8 § 2 (art. 8-2) and whether it involved other issues under the Convention. The Commission's subsequent consideration of the case did not extend beyond those questions.

78. As is recorded in paragraphs 25-56 above, the practice in England and Wales on the control of prisoners' correspondence has undergone substantial modification since the date of the Commission's report. For this reason, the Government did not contest many of the Commission's findings; they emphasised that the revised Orders had now been published and that the majority of the letters involved in this case would not have been stopped under the new regime. These circumstances enabled the President to make his Order of 22 July 1982 limiting the scope of the hearings to the issues still in dispute (see paragraph 6 above).

The applicants criticised the new control system in various respects. The Government, for their part, asked the Court to take note of the changes effected in 1981 and also in 1975 (see paragraph 32 above); although their

submissions suggested that the Court should at least take the new regime into account as remedying breaches of the Convention which had previously existed, they stated at the hearings that they were not seeking a ruling on its compatibility with the Convention.

79. In general, it is not the Court's task to rule on legislation in abstracto; indeed, at the time of the events giving rise to this case, the new regime was not yet in force. Its compatibility with the Convention therefore cannot be examined by the Court (see notably, mutatis mutandis, the National Union of Belgian Police judgment of 27 October 1975, Series A no. 19, p. 17, § 36, and the above-mentioned Ireland v. the United Kingdom judgment, Series A no. 25, p. 72, § 189). However, the Court notes with satisfaction that, following its Golder judgment of 21 February 1975 (Series A no. 18) on the one hand and as a result of the applications in which this case originated on the other, substantial changes have been made by the United Kingdom with a view to ensuring the observance of the engagements undertaken by it in the Convention.

II. THE ALLEGED VIOLATION OF ARTICLE 6 § 1 (art. 6-1)

80. Mr. Silver claimed that the refusal of his 1972 and 1973 petitions to the Home Secretary for permission to seek legal advice (see paragraph 12 above) constituted a denial of access to the courts, in violation of Article 6 § 1 (art. 6-1) of the Convention, as interpreted by the Court in its above-mentioned Golder judgment. The Article (art. 6-1), so far as is relevant, reads:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Court will confine itself to the 1972 petition: the Commission found it not to have been established that the 1973 petition had been refused and the point was not pursued before the Court.

81. The Government's principal plea was that the Court should decline to rule on the matter in light of the changes made to the law and practice since the Golder judgment (see, inter alia, paragraph 32 above).

The Court is unable to accept this plea. The changes in question were introduced, firstly, to give effect to the terms of that judgment and, secondly, as a result of the proceedings before the Commission in the present case. Nevertheless, dating as they do from 1975 and 1981, they clearly could not have restored the right claimed by Mr. Silver under Article 6 § 1 (art. 6-1); it is therefore not possible to speak of a "solution", even partial, "of the matter" (see, mutatis mutandis, Rule 47 § 2 of the Rules of Court and the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 27, § 64). In addition, the memorial of 22 September

1982 (see paragraph 8 above) contains a claim in the name of this applicant for just satisfaction under Article 50 (art. 50) and a determination by the Court of the Article 6 § 1 (art. 6-1) issue may be of relevance in this connection.

82. The Government, in the alternative, stated that in light of the Golder judgment they did not contest the Commission's finding that there had been a violation of Article 6 § 1 (art. 6-1). There being no material difference between the facts of Mr. Silver's case and those of Mr. Golder's, the Court confirms that finding.

III. THE ALLEGED VIOLATION OF ARTICLE 8 (art. 8)

83. In the applicants' submission, the stopping or delaying of the 64 letters in question constituted a violation of Article 8 (art. 8), which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

84. It is clear - and indeed this was not disputed - that there were "interferences by a public authority" with the exercise of the applicants' right to respect for their correspondence, which is guaranteed by paragraph 1 of Article 8 (art. 8-1). Such interferences entail a violation of that Article if they do not fall within one of the exceptions provided for in paragraph 2 (art. 8-2). The Court therefore has to examine in turn whether the interferences in the present case were "in accordance with the law", whether they had an aim or aims that is or are legitimate under Article 8 § 2 (art. 8-2) and whether they were "necessary in a democratic society" for the aforesaid aim or aims (see notably, mutatis mutandis, the Sunday Times judgment of 26 April 1979, Series A no. 30, p. 29, § 45).

A. Were the interferences "in accordance with the law"?

1. General principles

85. In its Sunday Times judgment of 26 April 1979, the Court examined the meaning of the expression "prescribed by law", noting in this connection certain differences which exist between the French and English versions of Articles 8, 9, 10 and 11 (art. 8, art. 9, art. 10, art. 11) of the Convention,

Article 1 of Protocol No. 1 (P1-1) and Article 2 of Protocol No. 4 (P4-2) (ibid., p. 30, § 48).

The Government accepted that the principles enounced in the said judgment concerning the expression "prescribed by law/prévues par la loi" in Article 10 (art. 10) were also applicable to the expression "in accordance with the law/ prévue par la loi" in Article 8 (art. 8). Indeed, this must be so, particularly because the two provisions overlap as regards freedom of expression through correspondence and not to give them an identical interpretation could lead to different conclusions in respect of the same interference.

86. A first principle that emerges from the Sunday Times judgment is that the interference in question must have some basis in domestic law (ibid., p. 30, § 47). In the present case, it was common ground between Government, Commission and applicants that a basis for the interferences was to be found in the Prison Act and the Rules, but not in the Orders and Instructions which lacked the force of law (see paragraph 26 above). There was also no dispute that the measures complained of were in conformity with English law.

87. A second principle is that "the law must be adequately accessible: the citizen must be able to have an indication that is adequate, in the circumstances, of the legal rules applicable to a given case" (ibid., p. 31, § 49). Clearly, the Prison Act and the Rules met this criterion, but the Orders and Instructions were not published.

88. A third principle is that "a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail" (ibid.).

A law which confers a discretion must indicate the scope of that discretion. However, the Court has already recognised the impossibility of attaining absolute certainty in the framing of laws and the risk that the search for certainty may entail excessive rigidity (ibid.). These observations are of particular weight in the "circumstances" of the present case, involving as it does, in the special context of imprisonment, the screening of approximately ten million items of correspondence in a year (see paragraph 57 above). It would scarcely be possible to formulate a law to cover every eventuality. Indeed, the applicants themselves did not deny that some discretion should be left to the authorities.

In view of these considerations, the Court points out once more that "many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice" (ibid.). And in the present case the operation of the correspondence control system was not merely a question of practice that varied in each individual instance: the Orders and Instructions established a

practice which had to be followed save in exceptional circumstances (see paragraphs 26 and 27 above). In these conditions, the Court considers that although those directives did not themselves have the force of law, they may - to the admittedly limited extent to which those concerned were made sufficiently aware of their contents - be taken into account in assessing whether the criterion of foreseeability was satisfied in the application of the Rules.

89. For this reason, the Court cannot accept the applicants' additional contention that the conditions and procedures governing interferences with correspondence - and in particular the directives set out in the Orders and Instructions - should be contained in the substantive law itself.

90. The applicants further contended that the law itself must provide safeguards against abuse.

The Government recognised that the correspondence control system must itself be subject to control and the Court finds it evident that some form of safeguards must exist. One of the principles underlying the Convention is the rule of law, which implies that an interference by the authorities with an individual's rights should be subject to effective control (see, inter alia, the Klass and others judgment of 6 September 1978, Series A no. 28, pp. 25-26, § 55). This is especially so where, as in the present case, the law bestows on the executive wide discretionary powers, the application whereof is a matter of practice which is susceptible to modification but not to any Parliamentary scrutiny (see paragraph 26 above).

However, the Court does not interpret the expression "in accordance with the law" as meaning that the safeguards must be enshrined in the very text which authorises the imposition of restrictions. In fact, the question of safeguards against abuse is closely linked with the question of effective remedies and the Court finds it preferable to take this issue into account in the wider context of Article 13 (art. 13) (see paragraphs 111-119 below).

2. Application in the present case of the above-mentioned principles

(a) Non-contested items

91. The Commission expressed the opinion that the stopping on the following principal or subsidiary grounds of the following letters was not foreseeable and, hence, was not "in accordance with the law":

(a) restriction on correspondence with legal adviser, on the ground that the applicant had already had sufficient facilities to seek legal advice (see paragraphs 32 and 60 above): Mr. Cooper's letter no. 27;

(b) prohibition on representations connected with the prisoner's trial, conviction or sentence (see paragraphs 43 and 61 above): Mr. Noe's letter no. 8 and Mr. McMahon's letters nos. 35 and 37;

(c) prohibition of grossly improper language (see paragraphs 45 (a), item (vi), and 65 above): Mr. Cooper's letters nos. 28-31;

(d) prohibition on material intended for publication (see paragraphs 45 (a), item (v), and 66 above): Mr. Silver's letter no. 5, Mr. McMahon's letters nos. 32, 34, 37 and 42 and Mr. Carne's letters nos. 60 and 61;

(e) prohibition on the inclusion in letters to legal advisers and Members of Parliament of unventilated complaints about prison treatment (see paragraphs 45 (a) and (b), 47 and 67 above): Mr. Noe's letters nos. 9 and 11, Mr. Cooper's letters nos. 20, 22, 23, 24 and 26 and his further letter of 3 April 1974, and Mr. Carne's letters nos. 43, 45, 53, 54 and 56 and his further letters of 27 December 1974 and 11 January 1975;

(f) prohibition on the inclusion in general correspondence of complaints about prison treatment (see paragraphs 45 (a), item (ix), and 68 above): Mr. Silver's letters nos. 1, 2, 3, 4 and 6, Mr. Tuttle's letter no. 18 and Mr. Carne's letters nos. 44, 46, 47, 48, 50, 51, 52, 55, 60 and 61;

(g) prohibition on allegations against prison officers (see paragraphs 45 (a), item (x), and 69 above): Mr. Silver's letter no. 6;

(h) the petition aspect of the prohibition on attempts to stimulate public agitation or petition (see paragraphs 45 (a), item (xi), and 70 above): Mr. McMahon's letters nos. 32 and 34;

(i) the general control of "objectionable" letters (no official explanation having been given - see paragraph 71 above): Mr. Cooper's letters nos. 19, 21 and 25.

As regards items (a) and (i), the Commission considered that the actual measure of interference complained of was not foreseeable; in the remaining cases, it considered that the rule under which the stopping was effected could not itself be foreseen.

The Government did not contest these findings on the part of the Commission, and the Court sees no reason to disagree. It therefore holds that the stopping of these letters on the grounds indicated above was not "in accordance with the law".

(b) Contested items

92. The Government or the applicants contested the Commission's findings on the "in accordance with the law" issue as regards three separate groups of letters. In accordance with the President's Order of 22 July 1982 (see paragraph 6 above), argument was presented to the Court at the hearings on these items, which will be considered in turn.

93. The first group comprises Mrs. Colne's letters nos. 13-15, Mr. McMahon's letters nos. 35-41 and a letter of 31 December 1975 to him from a journalist, all of which were stopped on the ground that they were not sent by or addressed to a relative or existing friend (see paragraphs 29-30 and 59 above). The Government contested the Commission's view that the relevant practice, by excluding correspondence with persons of good character, went further than could reasonably be deduced from Rule 34(8) in

conjunction with Rule 33(1) and that the stopping of these letters was accordingly not "in accordance with the law".

In determining whether the foreseeability criterion was satisfied in this instance, account cannot be taken of the Orders which supplemented Rule 34(8): they were not available to prisoners nor do their contents appear to have been explained in cell cards (see paragraphs 26, 30 and 88 above). However, the wording of Rule 34(8) (see paragraph 29 above) is itself quite explicit: a reader would see not that correspondence with persons other than friends or relatives is allowed subject to certain exceptions but rather that it is prohibited save where the Secretary of State gives leave. Moreover, the Court considers that account should also be taken of Rule 33(2) - which contains a prohibition similar to that found in Rule 34(8) - and of Rule 34(2), from which it would be apparent that there were limits on the quantity of the correspondence of convicted prisoners (see paragraphs 29 and 38 above).

For these reasons, the Court concludes that the interferences in question were "in accordance with the law".

94. The second group comprises Mr. Carne's letters nos. 58 and 59, dated 12 December 1975 and 2 January 1976 and addressed to a Member of Parliament, which were stopped on the ground that they contained complaints about prison treatment, in respect of which the "prior ventilation rule" had not been observed (see paragraphs 45 (b), 47 and 67 above). Whilst not contesting the Commission's view that the stopping of certain other letters in the same category was not foreseeable since the "prior ventilation rule" was not contained in the Rules themselves, the Government submitted that the position was otherwise as regards these two items. They relied on the explanatory notice which was issued for the information of prisoners in November 1975, that is before the two letters were written (see paragraph 45 (b) above).

The Court considers that the terms of the notice in question were such as to make those concerned sufficiently aware of the practice in the matter (see paragraph 88 above). The stopping of these letters was therefore a foreseeable application of the Rules and, hence, "in accordance with the law".

95. The third group comprises the following letters which were stopped or delayed on the principal or subsidiary grounds indicated:

(a) restrictions on communications in connection with any legal or other business (see paragraphs 32, 35, 41, 46 and 60 above): Mr. Noe's letter no. 10, and Mr. Carne's letters nos. 49 and 57 and his letter of 15 September 1975 to the National Council for Civil Liberties;

(b) prohibition on letters evading or circumventing the regulations (see paragraphs 44 and 62 above): Mr. Silver's letter no. 1 and Mr. Tuttle's letter no. 18;

(c) prohibition on discussion of the offences of others (see paragraphs 45 (a), item (ii), and 63 above): Mr. Silver's letter no. 7;

(d) prohibition on complaints calculated to hold the authorities up to contempt (see paragraphs 45 (a), item (iii), and 64 above): Mr. Tuttle's letter no. 17;

(e) prohibition on threats of violence (see paragraphs 45 (a), item (iv), and 65 above): Mr. Cooper's letters nos. 28-31;

(f) Mr. Noe's letter no. 12, which was delayed pending receipt of instructions from the Home Office (see paragraph 71 above).

The Commission found that each of the above interferences was foreseeable from the text of the Rules and was therefore "in accordance with the law". The applicants disputed this on the ground that the two further requirements which, in their submission, flowed from that expression (see paragraphs 89 and 90 above) had not been satisfied.

In view of the position which the Court has taken in those paragraphs on the applicants' said submission, it concurs with the Commission's finding.

B. Did the interferences have aims that are legitimate under Article 8 § 2 (art. 8-2)?

96. The applicants did not allege that the restrictions at issue in the present case were designed or applied for a purpose other than those listed in paragraph 2 of Article 8 (art. 8-2). The Government pleaded before the Commission that the aim pursued was "the prevention of disorder", "the prevention of crime", "the protection of morals" and/or "the protection of the rights and freedoms of others", and the Commission considered whether each interference was "necessary" for one or more of those purposes.

This matter was not discussed or questioned before the Court. It sees no reason to doubt that each interference had an aim that was legitimate under Article 8 (art. 8).

C. Were the interferences "necessary in a democratic society"?

1. General principles

97. On a number of occasions, the Court has stated its understanding of the phrase "necessary in a democratic society", the nature of its functions in the examination of issues turning on that phrase and the manner in which it will perform those functions. It suffices here to summarise certain principles:

(a) the adjective "necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary",

"useful", "reasonable" or "desirable" (see the Handyside judgment of 7 December 1976, Series A no. 24, p. 22, § 48);

(b) the Contracting States enjoy a certain but not unlimited margin of appreciation in the matter of the imposition of restrictions, but it is for the Court to give the final ruling on whether they are compatible with the Convention (ibid., p. 23, § 49);

(c) the phrase "necessary in a democratic society" means that, to be compatible with the Convention, the interference must, inter alia, correspond to a "pressing social need" and be "proportionate to the legitimate aim pursued" (ibid., pp. 22-23, §§ 48-49);

(d) those paragraphs of Articles of the Convention which provide for an exception to a right guaranteed are to be narrowly interpreted (see the above-mentioned Klass and others judgment, Series A no. 28, p. 21, § 42).

98. The Court has also held that, in assessing whether an interference with the exercise of the right of a convicted prisoner to respect for his correspondence was "necessary" for one of the aims set out in Article 8 § 2 (art. 8-2), regard has to be paid to the ordinary and reasonable requirements of imprisonment (see the above-mentioned Golder judgment, Series A no. 18, p. 21, § 45). Indeed, the Court recognises that some measure of control over prisoners' correspondence is called for and is not of itself incompatible with the Convention.

2. Application in the present case of the above-mentioned principles

(a) Non-contested items

99. The Commission expressed the opinion that the stopping on the following principal or subsidiary grounds of the following letters was not "necessary in a democratic society":

(a) restriction on correspondence other than with a relative or friend (see paragraphs 29-30 and 59 above): Mrs. Colne's letters nos. 13-15, Mr. McMahon's letters nos. 35-41 and a letter of 31 December 1975 to him from a journalist, Mr. Silver's letter no. 4 and Mr. Carne's letter no. 48;

(b) restriction on communications in connection with any legal or other business (see paragraphs 32, 35, 41, 46 and 6O above): Mr. Cooper's letter no. 27, and Mr. Carne's letters nos. 49 and 57 and his letter of 15 September 1975 to the National Council for Civil Liberties;

(c) prohibition on complaints calculated to hold the authorities up to contempt (see paragraphs 45 (a), item (iii), and 64 above): Mr. Tuttle's letter no. 17 and Mr. Carne's letter no. 51;

(d) prohibition on the inclusion in letters to legal advisers and Members of Parliament of unventilated complaints about prison treatment (see paragraphs 45 (a) and (b), 47 and 67 above): Mr. Noe's letters nos. 9 and ll, Mr. Cooper's letters nos. 20, 22, 23, 24 and 26 and his further letter of 3

April 1974, and Mr. Carne's letters nos. 43, 45, 53, 54, 56, 58 and 59 and his further letters of 27 December 1974 and 11 January 1975;

(e) the petition aspect of the prohibition on attempts to stimulate public agitation or petition (see paragraphs 45 (a), item (xi), and 70 above): Mr. McMahon's letters nos. 32 and 34;

(f) prohibition on letters evading or circumventing the regulations (see paragraphs 44 and 62 above): Mr. Silver's letter no. 1 and Mr. Tuttle's letter no. 18.

As regards item (f), the Commission considered that the measure, although taken on an intrinsically legitimate ground, was excessive. In the remaining cases, on the other hand, it was the ground itself as well as the measure which did not correspond to a necessity, within the meaning of Article 8 § 2 (art. 8-2); the Commission expressed the same opinion as regards the stopping, on the principal or subsidiary grounds indicated in sub-paragraphs (b), (c), (d), (f) and (g) of paragraph 91 above, of the letters listed in those sub-paragraphs. Finally, the Commission considered that the stopping of Mr. Cooper's letters nos. 19, 21 and 25 (see paragraph 71 above) was not "necessary".

The Government did not contest these findings on the part of the Commission, and the Court sees no reason to disagree. It therefore holds that the stopping of the letters in question was not "necessary in a democratic society".

(b) Contested items

100. As regards certain letters, the Government or the applicants contested the Commission's findings on the "necessity" issue. In accordance with the President's Order of 22 July 1982 (see paragraph 6 above), argument was presented to the Court at the hearings on these items, which will be considered in turn.

101. Mr. Noe's letter no. 10 to a solicitor was stopped as it contained a reference to a business transaction (see paragraphs 41, 46 and 60 above). The Commission found it not to be established that the interference was "necessary in a democratic society", notably because there was no supporting evidence to that effect. The Government contested this conclusion.

The Court notes that this letter - written by a prisoner convicted of fraud (see paragraph 13 above) - did not simply concern legal problems but interpretations (see paragraph 60 above). Without expressing any opinion on the restrictions in force at the relevant time on the conduct by prisoners of business activities in general, the Court considers, making due allowance for the United Kingdom's margin of appreciation, that the authorities were entitled to think that the stopping of this particular letter was necessary "for the prevention of disorder or crime", within the meaning of Article 8 § 2 (art. 8-2) of the Convention.

102. Mr. Silver's letter no.7 was stopped because it alluded to the presence in his prison of certain other criminals (see paragraphs 45 (a), item (ii), and 63 above). The Commission considered that the interference could be regarded as "necessary", notably since Mr. Silver could have rewritten the letter without the offending passage. His counsel claimed that the Government had not established that the opportunity to rewrite had been provided and that their statement that the letter would not be stopped under the regime in force since December 1981 demonstrated that the measure taken in 1973 was not "necessary".

In the absence of evidence to the contrary, the Court must assume that Mr. Silver was given the aforesaid opportunity, in accordance with the usual procedure (see paragraph 50 above). Bearing in mind that the other criminals referred to were "category A" prisoners (see paragraph 16 above), the Court finds that the authorities were entitled to think that the stopping of this particular letter was necessary "in the interests of public safety" and "for the prevention of disorder or crime", within the meaning of Article 8 § 2 (art. 8-)2).

103. Mr. Cooper's letters nos. 28-31 were stopped not only for employing grossly improper language but also for containing threats of violence (see paragraphs 45 (a),item (iv), and 65 above). His counsel contested the Commission's view that the interference was "necessary" on the second ground.

The Court agrees with the Commission. Letters nos. 28-30 contained clear threats and letter no. 31 can be regarded as a continuation thereof. In the Court's judgment, the authorities had sufficient reason for concluding that the stopping of these letters was necessary "for the prevention of disorder or crime", within the meaning of Article 8 § 2 (art. 8-2).

104. Finally, Mr. Noe's letter no. 12, to the United States Consul, was delayed for three weeks before being posted (see paragraph 71 above). His counsel questioned the necessity for this interference, whereas the Commission, in arriving at its conclusion that there had here been no violation of Article 8 (art. 8), found that there was no evidence that the interference was not justified as being "necessary" for one or more of the aims set out in paragraph 2 (art. 8-2) thereof.

The Court is of the view that when in any particular instance subordinate prison authorities are in doubt as to how they should exercise their supervisory functions regarding prisoners' correspondence, they must be able to seek instructions from higher authority. In the case of Mr. Noe's letter no. 12, the prison authorities found it necessary in the light of the law and practice applicable at the time to refer the letter to the Home Secretary for instructions; he decided that it should not be stopped. In these circumstances and bearing in mind that the subject-matter of the letter was not really urgent, the Court does not consider that the resultant delay of

three weeks in despatching the letter was so serious as to constitute a violation of Article 8 (art. 8).

D. Conclusions on Article 8 (art. 8)

105. To sum up, the stopping of Mr. Silver's letter no. 7, Mr. Noe's letter no. 10 and Mr. Cooper's letters nos. 28-31 was both "in accordance with the law" and justifiable as "necessary in a democratic society" (see paragraphs 95, 102, 101 and 103 above). These interferences therefore did not constitute a violation of Article 8 (art. 8). The same conclusion applies as regards the delaying of Mr. Noe's letter no. 12 (see paragraphs 95 and 104 above).

On the other hand, the stopping of the 57 remaining letters was not "necessary in a democratic society" (see paragraph 99 above); there has therefore been a violation of Article 8 (art. 8) in each case.

IV. THE ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

106. The applicants also submitted that the control of their mail by the prison authorities constituted a breach of their right to freedom of expression, guaranteed by Article 10 (art. 10) of the Convention.

107. The Commission concluded that since, in the context of correspondence, the right to free expression was guaranteed by Article 8 (art. 8), it was not necessary to pursue a further examination of the matter in the light of Article 10 (art. 10).

Neither Government nor applicants dissented from this opinion, with which the Court concurs.

V. THE ALLEGED VIOLATION OF ARTICLE 13 (art. 13)

108. The applicants alleged that there existed in the United Kingdom no effective remedy in respect of their claims under Articles 6 § 1, 8 and 10 (art. 6-1, art. 8, art. 10) and that they were therefore victims of a violation of Article 13 (art. 13), which provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Article 13 taken in conjunction with Article 6 § 1 and Article 10 (art. 13+6-1, art. 13+10)

109. The Commission expressed the opinion, which was not contested by the applicants before the Court, that:

- as regards Mr. Silver's complaint under Article 6 § 1 (art. 6-1) concerning the refusal of his 1972 petition (see paragraph 12 above), no separate issue arose under Article 13 (art. 13);

- its opinion concerning Article 10 (art. 10) (see paragraph 107 above) rendered it unnecessary to examine under Article 13 (art. 13) the Article 10 (art. 10) aspects of the applicants' complaints.

110. The Court shares the Commission's opinion. Having regard to its decision on Article 6 § 1 (art. 6-1) (see paragraphs 8O-82 above), there is no need to examine Mr. Silver's complaint under Article 13 (art. 13); this is because the requirements of the latter Article (art. 13) are less strict than, and are here absorbed by, those of the former (see, inter alia, the Sporrong and Lönnroth judgment of 23 September 1982, Series A no. 52, p.32, § 88). Again, there is no call to examine under Article 13 (art. 13) the Article 10 (art. 10) aspects of the complaints, since Articles 8 and 10 (art. 8, art. 10) overlap in this case (see paragraph 107 above).

B. Article 13 taken in conjunction with Article 8 (art. 13+8)

111. The same does not apply to the Article 8 (art. 8) aspects of the applicants' complaints, especially as the Court has decided to consider in the context of Article 13 (art. 13) the question of safeguards against abuse of the powers to control prisoners' correspondence (see paragraph 90 above).

The Commission, having examined various possible channels of complaint, came to the conclusion that there was no effective domestic remedy and, hence, a violation of Article 13 (art. 13). The Government requested the Court to hold that the facts of the case disclosed no breach of that provision or, alternatively, that they would disclose no such breach after the coming into effect of the revised Orders.

l12. Having held that the scope of the present case does not extend to the correspondence control system in force since December 1981 (see paragraph 79 above), the Court is unable to examine the Government's alternative plea.

113. The principles that emerge from the Court's jurisprudence on the interpretation of Article 13 (art. 13) include the following:

(a) where an individual has an arguable claim to be the victim of a violation of the rights set forth in the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress (see the above-mentioned Klass and others judgment, Series A no. 28, p. 29, § 64);

(b) the authority referred to in Article 13 (art. 13) may not necessarily be a judicial authority but, if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective (ibid., p. 30, § 67);

(c) although no single remedy may itself entirely satisfy the requirements of Article 13 (art. 13), the aggregate of remedies provided for under domestic law may do so (see, mutatis mutandis, the above-mentioned X v. the United Kingdom judgment, Series A no. 46, p. 26, § 60, and the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 32, § 56);

(d) neither Article 13 (art. 13) nor the Convention in general lays down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention - for example, by incorporating the Convention into domestic law (see the Swedish Engine Drivers' Union judgment of 6 February 1976, Series A no. 2O, p. 18, § 50).

It follows from the last-mentioned principle that the application of Article 13 (art. 13) in a given case will depend upon the manner in which the Contracting State concerned has chosen to discharge its obligation under Article 1 (art. 1) directly to secure to anyone within its jurisdiction the rights and freedoms set out in section I (see the above-mentioned Ireland v. the United Kingdom judgment, Series A no. 25, p. 91, § 239).

114. In the present case, it was not suggested that any remedies were available to the applicants other than the four channels of complaint examined by the Commission, namely an application to the Board of Visitors, an application to the Parliamentary Commissioner for Administration, a petition to the Home Secretary and the institution of proceedings before the English courts.

115. As regards the first two channels, the Court, like the Commission, considers that they do not constitute an "effective remedy" for the present purposes.

The Board of Visitors cannot enforce its conclusions (see paragraph 52 above) nor can it entertain applications from individuals like Mrs. Colne who are not in prison.

As regards the Parliamentary Commissioner, it suffices to note that he has himself no power to render a binding decision granting redress (see paragraph 54 above).

116. As for the Home Secretary, if there were a complaint to him as to the validity of an Order or Instruction under which a measure of control over correspondence had been carried out, he could not be considered to have a sufficiently independent standpoint to satisfy the requirements of Article 13 (art. 13) (see, mutatis mutandis, the above-mentioned Klass and others judgment, Series A no. 28, p. 26, § 56): as the author of the directives in question, he would in reality be judge in his own cause. The position, however, would be otherwise if the complainant alleged that a measure of control resulted from a misapplication of one of those directives. The Court is satisfied that in such cases a petition to the Home Secretary would in general be effective to secure compliance with the directive, if the complaint was well-founded. The Court notes, however, that even in these cases, at

least prior to 1 December 1981, the conditions for the submission of such petitions imposed limitations on the availability of this remedy in some circumstances (see paragraph 53 above).

117. The English courts, for their part, are endowed with a certain supervisory jurisdiction over the exercise of the powers conferred on the Home Secretary and the prison authorities by the Prison Act and the Rules (see paragraph 55 above). However, their jurisdiction is limited to determining whether or not those powers have been exercised arbitrarily, in bad faith, for an improper motive or in an ultra vires manner.

In this connection, the applicants stressed that the Convention, not being incorporated into domestic law, could not be directly invoked before the English courts; however, they acknowledged that it was relevant for the interpretation of ambiguous legislation, according to the presumption of the latter's conformity with the treaty obligations of the United Kingdom.

118. The applicants made no allegation that the interferences with their correspondence were contrary to English law (see paragraph 86 above). Like the Commission, the Court has found that the majority of the measures complained of in the present proceedings were incompatible with the Convention (see paragraph 105 above). In most of the cases, the Government did not contest the Commission's findings. Neither did they maintain that the English courts could have found the measures to have been taken arbitrarily, in bad faith, for an improper motive or in an ultra vires manner.

In the Court's view, to the extent that the applicable norms, whether contained in the Rules or in the relevant Orders or Instructions, were incompatible with the Convention there could be no effective remedy as required by Article 13 (art. 13) and consequently there has been a violation of that Article (art. 13).

To the extent, however, that the said norms were compatible with Article 8 (art. 8), the aggregate of the remedies available satisfied the requirements of Article 13 (art. 13), at least in those cases in which it was possible for a petition to be submitted to the Home Secretary (see paragraph 116 above): a petition to the Home Secretary was available to secure compliance with the directives issued by him and, as regards compliance with the Rules, the English courts had the supervisory jurisdiction described in paragraph 117 above.

119. To sum up, in those instances where the norms in question were incompatible with the Convention and where the Court has found a violation of Article 8 (art. 8) to have occurred there was no effective remedy and Article 13 (art. 13) has therefore also been violated. In the remaining cases, there is no reason to assume that the applicants' complaints could not have been duly examined by the Home Secretary and/or the English courts and Article 13 (art. 13) has therefore not been violated; this, however, is subject to the exception of Mr. Silver's letter no. 7, in respect of which the

remedy of petition to the Home Secretary was not available (see paragraphs 11 and 53 above).

VI. THE APPLICATION OF ARTICLE 50 (art. 50)

120. Article 50 (art. 50) of the Convention reads as follows:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

121. In the memorial filed on 22 September 1982 (see paragraph 8 above), the applicants claimed "general" damages for violation of their rights and reimbursement of specified legal costs and expenses; a claim for "special" damages was also put forward in the name of Mr. Silver, Mr. McMahon and Mr. Carne.

122. The written procedure on this issue has not yet been concluded (see paragraph 8 above). In these circumstances, the question of the application of Article 50 (art. 50) is not ready for decision and must therefore be reserved. The Court delegates to the President power to fix the further procedure in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that the refusal of Mr. Silver's petition of 20 November 1972 to the Home Secretary gave rise to a violation of Article 6 § 1 (art. 6-1) of the Convention;

2. Holds that, with the exception of Mr. Silver's letter no. 7, Mr. Noe's letters nos. 10 and 12 and Mr. Cooper's letters nos. 28 to 31, the stopping or delaying of all the letters written by or addressed to each applicant which are at issue in the present case constituted a violation of Article 8 (art. 8);

3. Holds that it is not necessary also to examine the case under Article 10 (art. 10);

4. Holds that it is also not necessary to examine under Article 13 (art. 13) the article 6 § 1 and Article 10 (art. 6-1, art. 10) aspects of the applicants' complaints;

5. Holds that there has been a violation of Article 13 (art. 13) to the extent specified in paragraph 119 of the judgment;

6. Holds that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) delegates to the President of the Chamber power to fix the further procedure.

Done in English and in French, the English text being authentic, at the Human Rights Building, Strasbourg, this twenty-fifth day of March, one thousand nine hundred and eighty-three.

Gérard WIARDA
President

Marc-André EISSEN
Registrar